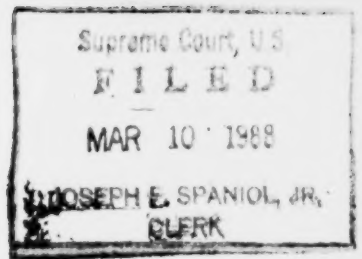


87-1527  
NO. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1987  
\_\_\_\_\_

EDWARD D. CHRISTENSEN,  
PETITIONER,  
V.

UNITED STATES OF AMERICA,  
RESPONDENT.  
\_\_\_\_\_

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
\_\_\_\_\_

PETITION FOR A WRIT OF CERTIORARI  
\_\_\_\_\_

Edward D. Christensen  
In Propria Persona  
387 North 300 East  
Richfield, Utah 84701  
Phone (801) 896 4719



## QUESTIONS PRESENTED

1. Whether U. S. Code, Title 18, Section 3231 and/or Title 26, Sections 6012, 7203, and 7343 casts doubt on the validity of the sentence imposed upon Christensen ?

2. Whether Rule 60(b) Fed. Rules of Civ. Procedure, or Rule 35, Fed Rules of Criminal Procedure permits the Court to correct Christensen's sentence ?

## PARTIES TO THIS PROCEEDING

There are no other parties to this proceeding that are not shown in the caption.

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## OPINIONS IN COURTS BELOW

The opinions and orders of the Courts below are in the Appendix of this Petition For Writ of Certiorari, beginning at A-1 (Appendix page 1)

## JURISDICTION OF THIS COURT

The date of the Judgment sought to be reviewed is October 7, 1987, there is no time of entry.

The date of the Order Denying Petition For Rehearing is Dec. 18, 1987, there is no order granting an extention of time within which to petition for certorari.

The statutory provision believed to confer jurisdiction on this court is 28 U.S.C., Sec. 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES AND  
RULES THAT THIS CASE INVOLVES

This case involves U. S. Constitution, Amendments 1, 4, 5, 10 and 13, U. S. Code Title 18, Sec. 3231, Title 26, Sections 6012, 7203, and 7343, Federal Rules of

Civil Procedure, Rule 60(b) and Federal Rules of Criminal Procedure, Rule 35. All are set out in the Appendix of this Petition for Writ of Certiorari.

#### STATEMENT OF THE CASE

This case was initiated by the United States Attorney for the Western District of Washington, on August 22, 1977, by signing a criminal information against Christensen. Said information was filed in the District Court for the Western District of Washington on August 30, 1977, No. CR 77-276. The Information did not show criminal jurisdiction of the Court over alleged Title 26 crimes nor over Christensen.

Jury trial was held on Jan. 11, 1978, and Christensen was convicted on 3 counts of willfull failure to file Federal income tax returns. Christensen was sentenced to prison and fined \$15,000 on Feb. 10, 1978. Christensen served the full term of imprisonment, less statutory reductions. 1,293

Silver Dollars were seized from Christensen and sold for \$12,167.13 on Jan. 27, 1986. Said \$12,167.13 has been credited to the fine imposed upon Christensen on Feb. 10, 1978.

Subsequent study by Christensen revealed lack of jurisdiction of the Court over the alleged Title 26 crimes and over Christensen.

Christensen filed a motion to vacate his sentence in the District Court for the Western District of Washington on Jan. 9, 1986, and it was filed in the District Court on Jan. 11, 1986. Christensen called the motion for hearing on Feb. 21, 1986. There was no timely objection to the motion to vacate by the U. S. Attorney.

Christensen filed a Notice of Default on April 19, 1986, and it was filed in the Court on April 22, 1986.

The U. S. Attorney responded to the Motion to Vacate on April 28, 1986.

The District Court ruled on the Motion



to Vacate on October 23, 1986, (A-6, A-7, A-8, and A-9 , Appendix pages 6-9) eight months after it was called for hearing.

Christensen filed a Notice of Appeal on Nov. 4, 1986, and it was filed in the District Court on Nov. 6, 1986.

Christensen filed his brief on Jan. 28, 1987 and the U. S. Attorney filed his brief on Feb. 25, 1987. Christensen filed his Reply brief on March 9, 1987.

The Court of Appeals ruled on the Appeal on Oct. 7, 1987 (A-1) Christensen applied for a stay of proceedings, and it was granted on Nov. 5, 1987. (A-3) Christensen filed a Petition for Rehearing on Nov. 30, 1987, it was denied on Dec. 18, 1987. (A-4) The Judgment of the Court of Appeals was entered in the District Court on Dec. 30. 1987. (A-5)

This is a Petition for a Writ of Certiorari to review the ruling of the Ninth Circuit Court of Appeals affirming a judg-

ment of the U. S. District Court for the Western District of Washington dismissing Petitioner's Motion to vacate his criminal sentence, imposed by said District Court. The case was given a civil designator CV-86-80M.

The District Judge arbitrarily selected Rule 60(b)(2) to deny the Motion to vacate Sentence, citing time limits, (A-7) even though Rule 60(b) provides two other subsections under which he could have granted the motion, subsection (4) "the judgment is void" and subsection (6) "any other reason justifying relief from the operation of the judgment."

Subsection (4) was applicable since Christensen argued that the District Court lacked jurisdiction over the alleged crime which would make the criminal judgment void. It was argued that the District Court had not been granted jurisdiction over 26 U.S.C. Sec. 7203, the alleged crime under which

Christensen was tried, citing 18 U.S.C. Sec. 3231, the jurisdictional grant to District Courts over crimes. Section 3231 was formed by combining sections 546 and 547 of title 18, U.S.C., 1940 ed., with section 588d of title 12, U.S.C., Banks and Banking, with no change of substance. Therefore the jurisdictional grant does not show a grant of jurisdiction over title 26 U.S.C. Section 7203. This Court established the requirements for criminal jurisdiction in U. S. v. Hudson and Goodwin, Feb. Term 1812.

"The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offence."

Without a specific grant of jurisdiction over 26 U.S.C., Sec. 7203 the District Court lacked jurisdiction and the judgment of the Court is void, and should have been vacated under Rule 60(b)(4). 18 U.S.C. Sec. 3231 is set out at A-10 and 26 U.S.C. Sec. 7203 is set out at A-13.

Christensen also argued that 26 U.S.C. Sec. 7203 did not apply to him, that it only applies to persons required to file income tax returns, as stated on the face of Sec. 7203, and that he was not such a person, citing 26 U.S.C. sections 6012 and 7343. (set out at A-11 and A-13)

Section 6012 is clear on its face, stating "...., except that a return shall not be required of an individual (other than an individual referred to in subparagraph (C))-...." Christensen presented clear argument, with exhibits, to show that he was not referred to in subparagraph (C) of Sec. 6012, and therefore not required to file returns as an individual. There was no rebuttal (other than to call the evidence and argument frivolous and without merit) which is ridiculous. Law cannot be either frivolous nor without merit.

Christensen also presented clear analysis of Sec. 7343, which defines the term "person"

as used in Sec. 7203 (same Chapter). Such person is clearly the person required to make returns for his respective corporation or partnership, not individual Christensen.

The above two Code Sections, 6012 and 7343 clearly casts doubt on the jurisdiction of the Court over Christensen, and where there is doubt as to jurisdiction, the Court must not take cognizance of the case.

"However, where the pleadings show on their face the court has no jurisdiction of the subject matter, or that the claim set forth is plainly without color or merit, or the pleadings are such that it is impossible to ascertain whether the jurisdiction of the court has been invoked, the court has no jurisdiction to proceed further than to decide to refuse to take cognizance." 21 CJS 33.

Although the above citation was not argued at trial, it is certainly grounds for vacating Christensen's sentence for want of jurisdiction by the trial Court.

Even if subsection (4) of Rule 60(b) could not be found applicable, subsection (6) could. It says "any other reason justifying relief from the operation of the

judgment."

Further, Rule 35(a), Rules of Criminal Procedure provides "The court may correct an illegal sentence at any time ..." which could have been used to grant Petitioner's motion to vacate his sentence, without question. Rule 35(a) was brought to the attention of the Court of Appeals in Christensen's petition for Rehearing.

Therefore, pursuant to Rule 21.1 (i) of the Rules of this Court, The jurisdiction of the U. S. District Court to entertain the criminal information against Christensen is challenged, which was the principal point of Christensen's Motion to vacate his sentence.

#### ARGUMENTS

##### REASONS FOR ALLOWANCE OF THE WRIT

Edward D. Christensen, a combat veteran for the United States in World War II, has been wronged by the United States of America. He has been denied protection of the laws,

been falsely imprisoned, and had property taken from him. He has applied to the Courts of the United States for redress of his grievances, in accordance with his rights to redress grievances under Amendments 1 and 9 of the U. S. Constitution. So far, he has been denied redress by the lower Courts. Such act being contrary to the purpose of the Courts, therefore, the Court of Appeals for the Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. Rule 17.1 (a) Rules of this Court.

The purpose of the Constitution is to "form a more perfect Union" (Preamble). To accomplish this the Founders prohibited Congress from making any law "abridging the right of the people to ... petition the Government for a redress of grievances"

(Amendment 1) and intentionally withheld the power to deny grievances from the Courts (Federalists Paper No. 84 "For why declare that things shall not be done which there is no power to do." The Courts have not been delegated the power to deny grievances and, therefore, do not have it. This leaves the right of the people to petition the Courts for a redress of grievances, and to have redress, undiminished.

Christensen presented a valid grievance to the District Court, supported by three U. S. Code sections. There was no rebuttal to show that any Code Section had been misconstrued, nor did the Court show such. Therefore, the District Court had no discretion to do other than redress the grievance. The Court of Appeals ruling "We review a district court's denial of a motion for relief from a judgment solely for abuse of discretion." is then without merit because the District Court had no discretion



to deny the relief requested.

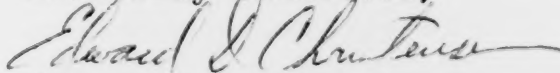
Further, both Rule 60(b) F.R.C.P. and Rule 35 F.R.Cr. P. were obviously promulgated to provide relief from judgments, and by their express terms "The court may relieve a party ... from a final judgment..." Rule 60 (b), and "The court may correct an illegal sentence at any time ...", Rule 35, the court obviously had power to grant the relief requested by Christensen, because it says so on the face of the rules.

It is quite clear why the lower courts denied the relief requested. It was obviously because of fear of the consequences if the relief was granted. However such is not the duty of the courts. The duty of the courts is set out in Canons of Judicial Ethics Nos. 20 and 24, (A-15 and 16), which is to apply the law as written and not to accept inconsistent duties, i.e. to deny rights to avoid the consequences of a proper decision. This Court has said:

"Constitutional rights may not be denied simply because of hostility to their assertion and exercise; vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." Watson v. Memphis, 375 U.S. 526.

In summation: Christensen has a right to redress his grievances, and presented a valid grievance to the District Court, The District Court had power to redress the grievance, and no power to deny it. The District Court had a duty to apply the law as written, but did not. Therefore the District Court abused its discretion, and the Court of Appeals sanctioned said abuse of discretion. This Court must allow the Writ of Certiorary in order to correct the errors of the courts below.

Sincerely submitted,



Edward D. Christensen  
In Propria Persona  
387 North 300 East  
Richfield, Utah 84701

## CERTIFICATE OF SERVICE

I hereby certify that I mailed 3 copies of the foregoing Petition For A Writ Of Certiorari to the following on March 7, 1988.

United States Attorney  
3600 Seafirst Fifth Avenue Plaza  
800 Fifth Avenue  
Seattle, Washington 98104

Solicitor General  
Department of Justice  
Washington, D. C. 20530

  
Edward D. Christensen



## APPENDIX



NOT FOR PUBLICATION

FILED  
OCT 7 1987

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 86-4321
	)	
Plaintiff-Appellee,	)	D.C. No.
	)	CV 86-80-M
-vs-	)	
	)	
EDWARD D. CHRISTENSEN,	)	MEMORANDUM
	)	
Defendant-Appellant.	)	

---

Appeal from the United States District  
Court for the Western District of  
Washington

Walter T. McGovern, District Judge,  
Presiding

Submitted August 18, 1987\*

Before: WALLACE, TANG, and THOMPSON,  
Circuit Judges.

Christensen appeals pro se the district  
court's denial of his motion under Federal  
Rule of Civil Procedure 60(b) for relief  
from his conviction for failure to file  
income tax returns. We have jurisdiction  
pursuant to 28 U.S.C. Sec. 1291, and we  
affirm.

We review a district court's denial of

a motion for relief from a judgment solely for abuse of discretion. Thompson v. Housing Authority of the City of Los Angeles, 782 F.2d 829, 832 (9th Cir. 1986). Because the Federal Rules of Civil Procedure apply by express terms only to "suits of a civil nature," Fed. R. Civ. P. 1, Christensen cannot obtain relief under rule 60(b) for his criminal conviction for income tax evasion. Hence, the district court did not err by denying Christensen relief under rule 60(b).

Nonetheless, because Christensen is a pro se appellant, we can assume that his motion was a petition for a writ of habeas corpus pursuant to 28 U.S.C. Sec. 2255. Such a petition, however, would fail because a petitioner under section 2255 must be in custody at the time his petition is filed, 28 U.S.C. Sec. 2255; Sperl v. Deukmejian, 642 F.2d 1154, 1155 (9th Cir. 1981) (per curiam), and Christensen has admitted that



he was not in custody when he filed this motion.

AFFIRMED.

---

\* The panel is unanimously of the opinion that oral argument is not required in this case. Fed. R. App. P. 34(a).

Note: This disposition is not appropriate for publication and may not be cited to or by the Courts of this Circuit except as provided by Ninth Circuit Rule 36-3.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED  
NOV-5 1987

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	No. 86-4321
	)	
v.	)	DC Nos.
	)	CV-86-80-M
EDWARD D. CHRISTENSEN,	)	CR-77-276-M
	)	
Defendant-Appellant.	)	<u>O R D E R</u>
	)	

---

Before: WALLACE, Circuit Judge

The appellant's motion for stay of proceedings is granted. All proceedings in

A-4

this case are stayed for twenty-eight (28)  
days from the date of this order.

NOT FOR PUBLICATION

FILED  
DEC 18 1987

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 86-4321
	)	
Plaintiff-Appellee,	)	D.C. No.
	)	CV 86-80-M
-vs-	)	
	)	<u>ORDER DENYING</u>
EDWARD D. CHRISTENSEN,	)	<u>PETITION FOR</u>
	)	<u>REHEARING</u>
Defendant-Appellant.	)	

---

Before: WALLACE, TANG, and THOMPSON,  
Circuit Judges.

Appellant's petition for rehearing is  
denied.

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAIL

ent 12-31-87

DEC 30 1987

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	No. 86-4321
	)	
v.	)	D.C. No.
	)	CV-86-80-M
EDWARD D. CHRISTENSEN,	)	
	)	
Defendant-Appellant.)	)	

Appeal from the United States District  
Court for the Western District of Washington  
(Seattle)

THIS CAUSE came on to be heard on the  
Transcript of the Record from the United  
States District Court for the Western  
District of Washington (Seattle) and was  
duly submitted.

ON CONSIDERATION WHEREOF, It is now here  
ordered and adjudged by this Court, that  
the judgment of the said District Court  
in this Cause be, and hereby is affirmed.

Filed and entered October 7 1987

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. C86-80M
	)	
EDWARD D. CHRISTENSEN,	)	ORDER
	)	
Defendant.	)	

---

THIS MATTER comes on for consideration by the undersigned Judge of the above-entitled Court upon yet another motion filed by the defendant Edward D. Christensen for an order of the Court vacating a judgment of conviction entered against him on February 10, 1978 in No. CR77-276S. Christensen did not appeal from that judgment of conviction.

By an Order entered on October 17, 1978 in civil No. C78-560L, Christensen's motion under 28 U.S.C. Sec 2255 to vacate, set aside or correct his sentence was denied.

By an Order entered on November 13, 1978 in civil No. 699L, Christensen's second motion under 28 U.S.C. Sec. 2255 for the same relief was denied.

Christensen now moves under Rule 60(b), Federal Rules of Civil Procedure, for relief from his 1978 judgment of conviction. Christensen's letter to the Clerk of the Court, dated January 15, 1986, reads, in part:

2. My motion to vacate is presented to clear my good name of a stain which never should have occurred. (newly discovered evidence of innocence)

Rule 60(b), Fed. R. Civ. P. provides that a motion pursuant to Rule 60(b)(2) shall be filed not more than one year after the judgment, order, or proceeding was entered or taken. The instant motion, accordingly, must be denied.

Were the motion timely filed, it would nevertheless be denied. The theories asserted for the relief requested are entirely legal, and of no merit. NOW THEREFORE,

IT IS ORDERED that this action be and the same is hereby DISMISSED.

The Clerk shall direct uncertified copies of this Order to the United States Attorney and to the defendant.

DATED the 23rd day of October, 1986.

---

WALTER T. MCGOVERN  
Chief United States District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CASE NO. C86-80M
	)	
v.	)	JUDGMENT
	)	
EDWARD D. CHRISTENSEN,	)	
	)	
Defendant.	)	
	)	

---

This matter having come on for consideration before the Court, Honorable Walter T. McGovern, Chief United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS HEREBY ORDERED AND ADJUDGED

This action is dismissed.

DATED this 24th day of October, 1986.

/s/  
Deputy United States District Clerk

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

AMENDMENT ONE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

AMENDMENT FOUR

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT FIVE

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public

danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

#### AMENDMENT THIRTEEN

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Congress shall have power to enforce this article by appropriate legislation.

#### AMENDMENT TEN

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

#### STATUTES

#### UNITED STATES CODE

#### TITLE 18, SECTION 3231 District courts.

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof. (June 25, 1948, ch. 645, 62 Stat. 826)



Legislative History

Reviser's Note.- Based on section 588d of title 12, U.S.C., 1940 ed., Banks and Banking; title 18, U.S.C., 1940 ed., Secs. 546, 546 (Mar. 4, 1909, ch. 321 Secs. 326, 340, 35 Stat. 1151, 1153; Mar. 3, 1911, ch. 231, Sec. 291, 36 Stat. 1167; May 18, 1934, ch. 304, Sec. 4, 48 Stat. 783)

This section was formed by combining sections 546 and 547 of title 18, U.S.C., 1940 ed., with section 588d of title 12, U.S.C., Banks and Banking, with no change of substance.

The language of said section 588d of title 12 U.S.C., 1940 ed., which related to bank robbery, or killing or kidnapping as an incident thereto (see section 2113, of this title), and which read "Jurisdiction over any offense defined by section 588b and 588c of this title shall not be reserved exclusively to courts of the United States" was omitted as adequately covered by this section.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment No. 10, 80th Cong.

TITLE 26,

SEC. 6012. Persons Required to Make Returns of Income.

(a) General Rule.- Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income or \$1,000 or more, except that a return shall not be required of an individual (other than an individual referred to in subparagraph (C))-

- (1) who is not married (determined by applying section 143), is not a surviving spouse (as determined section 2(a)), and for the taxable year has a gross income of less than \$3,300,
- (ii) who is surviving spouse (as so defined) and for the taxable year has a gross income of less than \$4,400, or
- (iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the income of his spouse, is, for the taxable year, less than \$5,400 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by \$1,000 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by \$1,000 for each personal exemption to which the individual or his spouse is entitled under section 151(c).

(c) The exception under subparagraph (A) shall not apply to-

- (i) a nonresident alien individual;
- (ii) a citizen of the United States entitled to the benefits of section 931;
- (iii) an individual making a return under section 443(a)(1) for a period of less than 12 months on account

of a change in his annual accounting period;

- (iv) an individual who has income (other than earned income) of \$1,000 or more and who is described in section 63(e)(1)(D); or
- (v) an estate or trust.

SEC. 7203. Willful Failure to File Return, Supply Information, or Pay Tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

SEC. 7343. DEFINITION OF TERM "PERSON".

The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

## RULES OF CIVIL PROCEDURE

## RULE 60 Relief From Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not effect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. Sec. 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review,

are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

## RULES OF CRIMINAL PROCEDURE

### Rule 35. Correction or Reduction of Sentence

(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

## CANNONS OF JUDICIAL ETHICS

### 20. Influence of Decisions Upon the Development of the law.

A judge should be mindful that his duty is the application of the general law to particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what

he may personally consider substantial justice in a particular case and disregard the general law as he knows it to be binding upon him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law.

#### 24. Inconsistant Obligations.

A judge should not accept inconsistant duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

